

General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

MUR # 5545

**Complainant:**

Jeffrey S. Smith  
2650 Anthony Court  
Easton, PA 18045

**Respondents:**

Dan Rather  
CBS News  
C/o Viacom Inc.  
1515 Broadway  
New York, NY 10036

CBS  
C/o Viacom Inc.  
1515 Broadway  
New York, NY 10036

Viacom Inc.  
1515 Broadway  
New York, NY 10036

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COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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**Complaint**

1. Upon information and belief, each of the Respondents identified above are fully/partially responsible for the release of political propaganda thinly veiled as a news report.
2. Upon information and belief, one or more of the Respondents identified above have spent numerous years investigating stale and tired accusations regarding the National Guard service of President George W. Bush.
3. Upon information and belief, although this investigation has been on going for several years and has been widely reported during numerous previous campaigns, one or more of the Respondents identified above is responsibly for conveniently broadcasting this "News Report" during a Presidential election year. Further, this report was even more conveniently released at a time when Presidential Candidate, John Kerry's, popularity was dropping in various Presidential Polls as

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a result of negative publication of issues surrounding his military service.

4. Upon information and belief, the alleged "News Report" constitutes "a communication expressly advocating the defeat of a clearly identified candidate", namely George W. Bush.
5. 11 CFR 100.16 defines the term "Independent expenditure" as follows:

**§100.16 Independent expenditure (2 U.S.C. 431(17)).**

(a) The term *independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents. A

6. 11 CFR 100.17 defines "Clearly identified" as follows:

**§100.17 Clearly identified (2 U.S.C. 431(18)).**

The term *clearly identified* means the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia."

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7. 11 CFR 100.22 identifies "Expressly advocating" as follows:

**§100.22 Expressly advocating (2 U.S.C. 431(f)).**

*Expressly advocating* means any communication that—(a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '84," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or

Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!"; or

(b) When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because—

(1) The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

(2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.

8. 11 CFR 100.52 identifies "Gift" as follows:

**§100.52 Gift, subscription, loan, advance or deposit of money.**

(a) A gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.72 and 100.73), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution.

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9. Further, 11 CFR 100.111 identifies "Gift" as follows:

**§100.111 Gift, subscription, loan, advance or deposit of money.**

(a) A purchase, payment, distribution, loan (except for a loan made in accordance with 11 CFR 100.113 and 100.114), advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office is an expenditure.

(e)(1) For purposes of this section, the term *anything of value* includes all in-kind contributions. Unless specifically exempted under 11 CFR part 100, subpart E, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for the goods or services is an expenditure. Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the expenditure is the difference between the usual and normal charge for the goods or services at the time of the expenditure and the amount charged the candidate or political committee.

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10. 11 CFR 114.1(a)(1) defines "contribution" as follows:

**§114.1 Definitions.**

(a) For purposes of part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 791(h))—

(1) The terms *contribution* and *expenditure* shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, if such loan is made in accordance with 11 CFR 100.82(a) through (d)) to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in 11 CFR 114.2 (a) or (b) as applicable.

11. 11 CFR 110.1 provides, in part, as follows:

**§110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).**

(a) *Scope.* This section applies to all contributions made by any person as defined in 11 CFR 100.10, except multicandidate political committees as defined in 11 CFR 100.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR parts 114 and 115.

(b) *Contributions to candidates; designations; and redesignations.* (1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office that, in the aggregate, exceed \$2,000.

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12. 11 CFR 114.2 provides, in part, as follows:

**§114.2 Prohibitions on contributions and expenditures.**

(a) National banks and corporations organized by authority of any law of Congress are prohibited from making a contribution, as defined in 11 CFR 114.1(a), in connection with any election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office. National banks and corporations organized by authority of any law of Congress are prohibited from making expenditures as defined in 11 FR 114.1(a) for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State or Federal office.

(1) Such national banks and corporations may engage in the activities permitted by 11 CFR part 114, except to

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13. 11 CFR 100.73 provides, in part, as follows:

**§100.73 News story, commentary, or editorial by the media.**

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

(a) That represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility; and

(b) That is part of a general pattern of campaign-related news accounts that give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution.

14. Merriam-Webster's Online Dictionary defines "News" as follows:

**1 a :** a report of recent events **b :** previously unknown information

15. The release of this propaganda does not qualify as a "News Story, commentary, or editorial" for the following reasons:

- a. The information reported is far from recent and or previously unknown.
- b. The report was not and is not identified as either commentary or an editorial.

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